
Order Decision

Inquiry held on 25 April 2017

by Martin Elliott BSc FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 23 May 2017

Order Ref: FPS/M2460/7/24

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Leicestershire County Council (Addition of Public Footpath I118 Bridge Street to Proctor's Park Road, Barrow upon Soar) Definitive Map Modification Order 2014.
- The Order is dated 15 August 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were no objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to modification.

Procedural Matters

1. I held a public local inquiry at County Hall, Glenfield, Leicester, on 25 April 2017. I carried out an unaccompanied inspection of the Order route and surrounding area on the afternoon of 24 April. This was limited to viewing the route from public vantage points and from Proctor's Park Road as I did not have the required permissions to walk the route. I did not carry out a further site inspection following the inquiry as there were no issues which required me to revisit the site. I am satisfied that I am able to reach my decision on the basis of my initial site visit and the evidence and submissions before me.
2. Following the making of the Order one objection was received relating to the 13 metres of Order route leading to point C¹. The objection was withdrawn shortly before the inquiry but, given the timescales, it was not possible to cancel the inquiry. In any event there were a number of issues on which I sought further information and the inquiry provided an opportunity to raise those issues. The objector did appear at the inquiry.
3. A representation, in effect a holding objection, was made on behalf of the owners of 35 Bridge Street in respect of the exact location of the Order route adjacent to the dwelling. However, upon clarification as to the alignment of the route an objection to the Order was not made.

The Main Issue

4. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of an event specified in section 53(3)(c)(i).

¹ Letters A, B and C identified in this decision relate to points identified on the Order map.

5. The main issue is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates. The test to be applied to the evidence is on the balance of probabilities.
6. Section 31 of the Highways Act 1980 provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.
7. Should the test for statutory dedication fail under section 31 of the 1980 Act then it may be appropriate to consider the dedication of the way at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public.

Reasons

Documentary evidence

8. The Council has considered a number of items of documentary evidence. The Order route is shown on a succession of Ordnance Survey maps from 1903 but the maps do not provide any evidence as to status. The 1921 map shows the pumping station to the south of 33 Bridge Street. Given that the Order route was in existence before that date this does not support the contention which has been made that the path was constructed to enable access to the pumping station.
9. Under section 26 and 27 of the Road Traffic Act 1960 the County Council made an Order (The County of Leicester (Various footpaths) Prohibition of Cycling Order 1964) to prohibit cycling along the Order route. The Schedule identifies 'Footpath alongside number 33 Bridge Street, leading to the Canal bridge and Proctor's Pleasure Park, Barrow upon Soar'. The Schedule includes a number of other routes which are recorded as public footpaths. The term road is defined as 'any highway and any other road to which the public has access'. It therefore does not necessarily follow that the route was considered to be a public highway but the fact that the Order was made suggests that the route enjoyed public access.
10. In 1968 a proposal was made, in respect of a definitive map review in 1978/80, to add a public footpath alongside 33 Bridge Street to the canal bridge and Proctor's Pleasure Park. The proposal was accepted on the basis of 'Existing County responsibility that requires adding to the definitive map'. No further records have been provided and the route was not recorded on the definitive map.

11. The documentary evidence shows the physical existence of the Order route and suggests that the route was considered to be public or a route to which the public had access. However, the evidence is insufficient for a conclusion to be reached that a right of way subsists.

Statutory dedication – Section 31 of the Highways Act 1980

When the right to use the way was brought into question

12. There is no dispute that the right to use the way was brought into question in March 2006 when the route was obstructed by a fence and trailer. This event appears to have prompted Barrow upon Soar Parish Council to make an application to add the route to the definitive map and statement. The obstruction of the route sets a relevant twenty year period of 1986 to 2006. No other evidence has been put before me of any other event which would have brought the right to use the way into question.

Evidence of use 1986 to 2006

13. Twenty six user evidence forms (UEFs) were submitted with the application made by the Parish Council identifying use of a route from Bridge Street to Proctor's Park Road. The forms indicate use by the public on foot during the twenty year period with the earliest use extending from 1927. Fifteen individuals have used the way for the full twenty year period with a number of others using the way for a significant part of the period. Use was as of right and without interruption on a regular basis, some use being daily. It is noted that the route was closed for a short period during the winter of 2005/06 to allow works to be carried out at the pumping station. However, for an interruption to be effective it must be with the intention of preventing public use (*Lewis v Thomas 1950*). The closure was to allow works to be carried out and not with the intention of preventing public use.
14. Prior to the Order being made the Council sought more detailed information from the original witnesses in respect of the route between points A and B. 23 responses were received. In consequence of those responses the Council progressed the Order on the basis of the route identified by the majority of those responding. Whilst there is some variance in the routes used the plan submitted by the Council (inquiry document 3) identifies use of a route which corresponds with the Order route.
15. A number of individuals gave evidence to the inquiry as to their use and knowledge of the Order route. This in my view was consistent with the evidence contained in the UEFs and adds weight thereto.
16. In withdrawing his objection Mr Proctor stated that the Order route had been entirely blocked during the relevant period and that use of the Order route was with permission.
17. As regards the blocking of the route during the relevant period the only evidence of any blockage is that identified at paragraph 13 above. This does not constitute an effective interruption. There is no evidence of any other obstructions on the Order route until the erection of the obstruction which brought the right to use the way into question. It is noted that the objection of Mr Proctor indicates that he has used the route in excess of 20 years and that customers of Proctor's Park have exercised a right along the route for a period

exceeding 40 years. This does not suggest that the route has been obstructed during the twenty year period.

18. In respect of permission, none of those using the way understood their use of the Order route to be with permission. This is perhaps with the exception of a Trevor Percival, although the response to the question on his UEF as to the granting of permission is not entirely clear; his use of the Order route is limited to 2004 to 2006. Many regarded the route as a public right of way. Although I note the contention of Mr Proctor there is no evidence that he granted permission to use the way. Further, the granting of permission to some does not prevent use by others from being as of right.
19. The Order route terminates at point C on Proctor's Park Road. From point C the evidence is that the public have walked along Proctor's Park Road over the canal bridge and then followed the canal towpath. The Council referred to a number of authorities² relating to cul-de-sac public rights of way. The authorities indicate that there is nothing to prevent a cul-de-sac from being dedicated or that the want of a terminus is essential for a public highway.
20. Proctor's Park Road is described by the Council as a private road with permissive public access. The evidence of Mr Proctor is that access to Proctor's Park Road is with permission but that he had no objection to use on foot; he was aware that the road was used to access the towpath. He acknowledged that he could withdraw permission but advised that he had no intention to do so. In the circumstances I consider that the Order route is capable of dedication as a public right of way.
21. Having regard to the above I conclude that the Order route has been used by the public as of right and without interruption for the full period of twenty years and that the use is sufficient to raise the presumption that the way has been dedicated as a public footpath.

Whether any landowner demonstrated a lack of intention to dedicate

22. In view of my findings it is necessary to consider whether any landowner, that is a person who is entitled to dispose the fee simple of the land, demonstrated a lack of intention to dedicate the way. For there to be sufficient evidence that there was no intention to dedicate the way there must be evidence of some overt acts on the part of the landowner, during the relevant period, such as to show the public at large, the public who used the path, that they had no intention to dedicate. The test is whether a reasonable user would have understood that the landowner, that is the owner of the land over which the route passes, was intending to disabuse the user of the notion that the way was public.
23. The Council have investigated the issue of landownership and have found that none of the land crossed by the Order route is registered in title. Title plans exclude the Order route from Mr Proctor's registered title. Mr Proctor claims in his original objection that he informed members of the public that there was no right of way over the section he claims to own. However, there is no evidence before me to indicate that Mr Proctor is the landowner within the meaning of

² *Attorney-General v Antrobus* (1905)2 Ch 188, *Williams-Ellis v Cobb* (1935)1 KB 310, *Robinson Webster (Holdings) Ltd v Agombar* (QBD) [2001]EWHC 510 (Ch) and *Norman and Bird v SoS for Environment, Food and Rural Affairs* (QBD)[2006]EWHC 1881 (Admin)

section 31 of the 1980 Act. In any event none of those who have used the way have been challenged in their use of the route or have observed any notices other than the prohibition of cycling notice. There is nothing before me to indicate that those using the route were disabused of the notion that the way is a public footpath. Use continued, on a regular basis, throughout the twenty year period.

24. There is no evidence of any other events which have demonstrated a lack of intention to dedicate the way as a public footpath. Bearing in mind the above the statutory dedication is made out. In view of this conclusion it is not necessary to consider dedication at common law.

Other Matters

25. The representation (paragraph 3) relates to the location of the Order route by reference to 35 Bridge Street. On the evidence the Council made the Order in respect of the route shown. The key to the Order map identifies the western edge of the Order route between A and B as being 2.5 metres to the wall of 35 Bridge Street. In my view this should also be reflected in the Order Schedule and I will modify the Order accordingly.
26. In withdrawing his objection Mr Proctor makes representations in respect of the handling of the Order by the Council. This is not a matter for my consideration.

Conclusion

27. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed subject to modification.

Formal Decision

28. The Order is confirmed subject to the following modification:

- At the end of Part 1 of the Schedule to the Order insert '*The distance from the western edge of the footpath to the wall of 35 Bridge Street (A-B) is 2.5 metres.*'

Martin Elliott

Inspector

APPEARANCES

For Leicestershire County Council:

Nisha Varia	Solicitor, Leicestershire County Council
who called	
Lesley Bell	Parish Clerk to Barrow on Soar Parish Council
	and member of public
Martyn Cocks	Member of public
Anthony Luke Smith	Member of public
Gillian Flinders	Member of public
Stephen Tipping	Leicestershire County Council Access Officer

Also in support of the Order:

Anthony Kershaw	County Councillor Quorn and Barrow
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In opposition to the Order:

Richard Proctor	Proctors Pleasure Park
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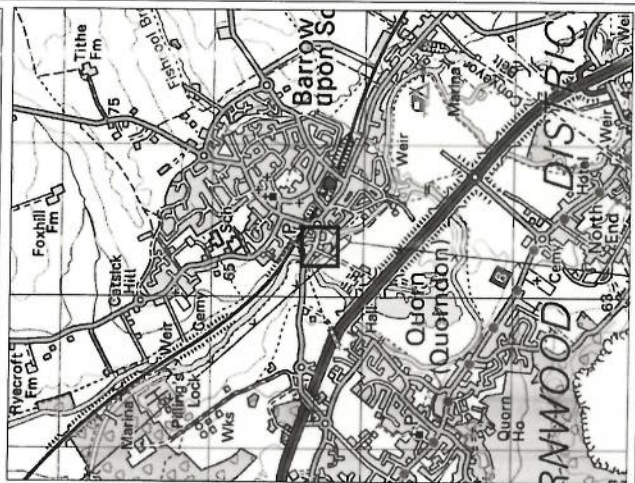
Documents handed in at the inquiry

- 1 Certificate of posting
- 2 Opening submissions of Leicestershire County Council
- 3 1:200 scale plan showing analysis of routes used A to B
- 4 Closing Submissions of Leicestershire County Council

Leicestershire County Council

(Addition of Public Footpath I118 Bridge Street to Proctor's Park Road, Barrow upon Soar)

Definitive Map Modification Order 2014



Location Plan

Key

Public Footpath to be Added (A-B-C)

Existing Public Footpaths

NB: The distance from the western edge of the footpath to the wall of 35 Bridge Street (A-B) is 2.5 metres

Environment & Transport Department,
County Hall, Glenfield,
Leicestershire LE3 8RJ
email footpaths@leics.gov.uk
Phil Crossland, Director



Leicestershire
County Council

Plan No. M711A(P)-01

Scale 1:1250



THE COMMON SEAL OF THE LEICESTERSHIRE
COUNTY COUNCIL was hereto affixed this
15th day of August 2014 in the presence of:-

Authorised Officer *Lawrence*

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